

Message Text

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PAGE 01 TOKYO 16863 01 OF 02 290226Z

61/50

ACTION L-02

INFO OCT-01 EA-06 ISO-00 SNM-02 JUSE-00 SCA-01 SY-04 PRS-01

DEAE-00 SCS-03 SSO-00 RSC-01 SS-15 NSC-05 NSCE-00

SP-02 /043 W

----- 009244

O 291230Z DEC 74

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC NIACT IMMEDIATE 7015

C O N F I D E N T I A L SECTION 1 OF 2 TOKYO 16863

C O R R E C T E D C O P Y (TO TEXTS PARA ONE LINE 27)

E.O. 11652: GDS

TAGS: CPRS, PFOR, SNAR, JA

SUBJECT: JUDICIAL ASSISTANCE - DEPARTMENT OF JUSTICE DEPOS-
OSITION REQUEST

REF:: A. STATE 282653; B. TOKYO 16797

1. FONOFF (NUMATA) PROVIDED EMBASSY OFFICER DECEMBER 28 WITH
JAPANESE TEXT OF FINAL
DRAFT OF NOTE VERBALE CONTAINING GOJ REPLY TO EMBASSY NOTE VERBALE
OF DECEMBER 5 TAKING OF DEPOSITION. NUMATA EXPLAINED THAT THERE
HAD NOT BEEN TIME TO PREPARE NOTE IN FINAL FORM AND THAT
OFFICIAL COPY WOULD BE PROVIDED AFTER NEW YEAR HOLIDAY (ABOUT
JANUARY 6.) TEXT OF
EMBASSY'S UNOFFICIAL TRANSLATION OF DRAFT NOTE FOLLOWS:

THE MINISTRY OF FOREIGN AFFAIRS PRESENTS ITS COMPLIMENTS TO
THE EMBASSY OF THE UNITED STATES OF AMERICA AND, WITH REFERENCE
TO THE EMBASSY'S NOTE VERBALE NO. 901 DATED DECEMBER 5,
1974 REQUESTING
THE PERMISSION OF THE GOVERNMENT OF JAPAN FOR THE TAKING OF
DEPOSITIONS
FROM TWO AMERICAN NATIONALS, THOMAS JOHN ADAMS AND THOMAS EDEARD
GAMBLE, CURRENTLY INCARCERATED IN YOKOSUKA PRISON, IN CONNECTION
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PAGE 02 TOKYO 16863 01 OF 02 290226Z

WITH THE CASE OF SUSPECTED VIOLATION OF UNITED STATES NARCOTIC

LAWYERS BY FOUR DEFENDANTS, CLEOPHUS JAMES KEARNEY, ANDRE WILLIS KING, EUGENE LEMON, JUNIOR, AND FRED NEIL POWELL, WHICH IS NOW PENDING IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, HAS THE HONOR TO REPLY AS FOLLOWS;

1) THE GOVERNMENT OF JAPAN PERMITS THE UNITED STATES FEDERAL PROSECUTOR (S), THE DEFENDANTS, AND THEIR DEFENSE ATTORNEYS TO BE PRESENT AND CONDUCT CROSS EXAMINATION AT THE DEPOSITION (ARTICLE 17 (1)(E) OF THE CONSULAR CONVENTION BETWEEN JAPAN AND THE UNITED STATES OF AMERICA) TO BE TAKEN BY A UNITED STATES CONSULAR OFFICER IN TOKYO AT AN APPROPRIATE TIME IN THE WEEK BEGINNING JANUARY 20 1975 ON CONDITION THAT SATISFACTORY ARRANGEMENTS WILL BE WORKED OUT BETWEEN JAPAN AND THE UNITED STATES CONCERNING THE DETAILS OF THE CARRYING OUT OF THE DEPOSITION.

1) IT IS UNDERSTOOD THAT, IN THE EVENT THAT IT IS DEEMED NECESSARY FOR A JAPANESE CONSULAR OFFICER IN THE UNITED STATES TO TAKE DEPOSITIONS WITH THE PRESENCE OF JAPANESE PROSECUTORS, DEFENSE ATTORNEY'S AND/OR DEFENDANTS WITH RESPECT TO CASES SIMILAR TO THE PRESENT CASE, TO GOVERNMENT OF THE UNITED STATES OF AMERICA WILL PERMIT JAPANESE PROSECUTORS, DEFENSE ATTORNEYS AND/OR DEFENDANTS TO BE PRESENT AND CONDUCT CROSS EXAMINATIONS IN A MANNER SIMILAR TO THE PERMISSION GRANTED BY THE GOVERNMENT OF JAPAN IN THE PRESENT CASE.

2. NUMATA CALLED ATTENTION THE PARENTHETICAL REFERENCE TO ARTICLE 17 OF THE CONSULAR CONVENTION IN PARA 1 OF NOTE. ON THE BASIS OF HIS EXPLANATION, IT APPEARS THAT GOJ INTENDS TO ACKNOWLEDGE THEREBY THAT THE TAKING OF DEPOSITION PER SE IS WITHIN FRAMEWORK OF ARTICLE 17 BUT THAT THE FORMAT PROPOSED BY US SIDE (I.E. PRESENCE OF DEFENDANTS AND ATTORNEYS) RAISES PROBLEMS OF INTERPRETATION OF THIS ARTICLE WHICH HAVE NOT BEEN RESOLVED. HENCE, DECISION MADE ON AD HOC BASIS TO ACCOMMODATE THIS PROCEDURE.

3. NUMATA EXPRESSED THE HOPE THAT USG COULD OFFER ASSURANCE THAT WORDING OF PARA 2 OF THE JAPANESE NOTE VERBALE WILL NOT BE CONSTRUED TO PRECLUDE THE ADMISSION TO THE U.S. OF JAPANESE POLICE INVESTIGATORY OFFICIALS WHO, UNDER JAPANESE JUDICIAL PRACTICE, NORMALLY OBTAIN DEPOSITIONS PRIOR TO THE ENTERING OF AN INDICTMENT. NUMATA INDICATED THAT FOREIGN OFFICE MAKING THIS CONFIDENTIAL

CONFIDENTIAL

PAGE 03 TOKYO 16863 01 OF 02 290226Z

REQUEST AT INSISTANCE OF JAPANESE NATIONAL POLICE.

4. EMBASSY OFFICE DID NOT CONVEY SUBSTANCE OF PARA 1(G), REFTEL A SINCE IT MADE NO REFERENCE TO SUGGESTION OUTLINED IN PARA 1(G) REFTEL B. ALTHOUGH FINANCIAL RESPONSIBILITY ISSUE NOT RAISED IN NOTE VERBALE, NUMATA MADE CLEAR THAT IT REMAINS AN IMPORTANT CONCERN WITHIN MINISTRY OF JUSTICE (MOJ). HE URGED, THEREFORE, THAT WE PROVIDE FOR HIS USE IN FURTHER DISCUSSIONS WITH MOJ

QTE A REASONABLE AND PERSUASIVE ACCOUNT OF U.S. LEGAL SYSTEM
GOVERNING COMPENSATION BY FEDERAL GOVERNMENT UNQTE SO THAT
HE MAY BE ABLE TO PERSUADE MOJ THAT IT IS IMPOSSIBLE

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PAGE 01 TOKYO 16863 02 OF 02 281305Z

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C O N F I D E N T I A L SECTION 2 OF 2 TOKYO 16863

TO HOLD USG LEGALLY RESPONSIBLE FOR POSSIBLE DAMAGES CAUSED
BY DEFENDANTS WHILE IN JAPAN. NUMATA ALSO CONTINUES TO FEEL
IT WOULD BE HELPFUL IF WE COULD PROPOSE STATEMENT ALONG LINES
PARA 1)G) OF REFTEL B, BUT WITHOUT USING TERM
QTE EX GRATIA UNQTE.

5. NUMATA STATED THAT POLICE HAVE REQUESTED THAT A MEETING OF
US REPRESENTATIVES (I.E. EMBASSY OFFICERS), POLICE IMMIGRATION
AND PRISON OFFICIALS (INCLUDING LOCAL OFFICIALS) BE HELD WITHIN
TEN DAYS PRIOR TO DATE OF DEPOSITON FOR PURPOSE OF WORKING OUT
DETAILS OF SURVEILLANCE AND ESCORT OF DEFENDANTS
AS WELL AS MEASURES TO PREVENT THEIR ESCAPE. HE STATED THAT
HANDCUFFING OF DEFENDANTS AS SUGGESTED PARA 1(E)(2) REFTEL A NOT
ACCEPTABLE. ON BASIS NUMATA'S DISCUSSION OF CUSTODY ISSUE,
IT APPEARS THAT IMMIGRATION OFFICIALS MAY BE PLACED ABOARD THE
BUS TRANSPORTING DEFENDANTS FROM AIRPORT TO YOKOSUKA PRISON.
HE FORESAW NO PROBLEM WITH EMBASSY OFFICERS ACCOMPANYING
DEFENDANTS AS QTE ESCORTS UNQTE. IT APPEARS TO EMBASSY THAT GOJ
IS NOT GOING TO PRESS FOR U.S. TO ASSUME SOLE RESPONSIBILITY
FOR BEHAVIOR AND CUSTODY OF DEFENDENTS. JAPANESE POLICE
AND IMMIGRATION OFFICIALS PROBABLY WILL AGREE TO TAKE PRECAUT-
IONARY MEASURES WITHOUT FORMAL ACKNOWLEDGMENT OF RESPONSIBILITY OF
DEFINING THEIR AUTHORITY.

6. OF SEVERAL LOCATIONS IN YOKOSUKA AREA PROPOSED BY EMBASSY,

NUMATA THOUGHT THAT NAVY ENLISTED MEN'S CLUB ALLIANCE, LOCATED
OFF YOKOSUKA NAVAL BASE WOULD BE BEST ARRANGEMENT IF IT
IS CONFIRMED THAT THIS IS NOT A FACILITY UNDER THE
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PAGE 02 TOKYO 16863 02 OF 02 281305Z

STATUS OF FORCES AGREEMENT (SOFA). (EMBASSY CHECKING THIS POINT).
FOREIGN OFFICE APPARENTLY FIRM IN REFUSING DEFENDENTS TO BE
HOUSED ON U.S. SOFA FACILITY.

7. GOJ APPARENTLY HAS NOT YET WORKED OUT PROCEDURES FOR ADMITTING
DEFENDENTS TO JAPAN BUT ACCORDING TO NUMATA MOJ IS LEANING
TOWARD ADMISSION ON BASIS 72-HOUR SHORE PASSES INSTEAD OF
ISSUING VISAS. HE STATED, HOWEVER, THAT POLICE HAVE TAKEN POSITION
THE DEFENDENTS WILL NOT BE ADMITTED TO JAPAN UNTIL DETAILS CONCERN
ING SURVEILLANCE, ESCORT, ETC (PARP 5 ABOVE) HAVE
BEEN AGREED UPON. IF THERE IS ANY POSSIBILITY THAT DEFENDENTS
WILL HAVE TO REMAIN IN JAPAN MORE THAN 72 HOURS, THEN VISAS
WOULD BE REQUIRED.
HODGSON

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